Supreme Court, U.S.

05 - 725 DEC - 1 2005

OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

Roger Liverman, Jr.,
Petitioner.

Vs.

United States Court of Appeals, Tenth Circuit
Respondent

PETITION FOR WRIT OF MANDAMUS

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INTRODUCTION

Whether the Doctrine of the Rule of Law survives will depend on whether the Court exercises that "fundamental doctrine", on whether, the Court summons the will and the wisdom to do what is needed ----- and to grant this Petition and the right of an individual appearing Pro Se to speak his case in front of the United States Supreme Court for the world to see. Only then will the Doctrine of the Rule of Law will be restored along with the integrity of the Court.

The Courts appears so lost in uncertainty or paralyzed by politics that it is either unable or unwilling to act according to there Constitutional responsibility as a check and balance to the other two branches of government and more important the Defender of the Rule of Law.

The Republic of the United States of America has been described as a three legged stool the strength is based on a balance between each leg. If one leg becomes weak the whole stool becomes shaky or may fall. The founding father's envisioned and created a set of checks and balances delicately intertwined to prevent abuse and create a way to redress grievances, to protect citizens in a gentler manner, other than the historic means of resolving conflict by violence, civil unrest, revolution and war. Thus the Rule of Law Doctrine was established.

Those so famous words uttered not so long ago; "We hold these truths to be self evident that all men are created equal". Circumstances of life, makes and determines ones place in life and makes individuals either equal or not equal, rich-poor, bond-free,

Educated-Illiterate. But, only one place--- and the Founding Father's knew this. That only through the Doctrine of the Rule of Law would make all men equal. Only through the law can we be treated the same, it is a bedrock principle of our Constitution and way of life. The action of the Courts below and the Defendants has brought this into question. Are we a nation of the Rule of Law and not of Men?

This very issue of whether or not the "Rule of Law Doctrine" exists in the United States presents the Courts and the nation as a whole with a strategic challenge of global proportion, specifically in regards to U.S. Foreign Policy. Where the "Doctrine of the Rule of Law is being touted as a key in winning the war on global terrorism i.e. Afghanistan, Iraq, Iran, North Korea, Human Rights in China, Tibet and countless other countries in despair and where no law exists in any form.

Some critics may think this is irrelevant to the matter before the Court. I will show that this is a false assumption. The treatment of the Petitioner and the facts will show this has been a travesty of justice and should never have happened under our system of Government and especially of a nation that embraces the Doctrine of the Rule of Law. Ben Franklin was asked, "What hath though wrought? His reply: "A Republic if you can keep it."

If the Court does not Grant the Petitioner the right to argue his case before the Court. Then the Republic is dead and so is the Doctrine of the Rule of Law.

QUESTIONS PRESENTED

I. WHAT IS THE LEGAL DEFINITION OF THE WORD "SHALL"?

II. DOES THE FEDERAL RULES OF CIVIL PROCEDURE, RULES OF APPELLATE PROCEDURE APPLY TO INDIVIDUALS APPEARING PRO SE OR ONLY TO ATTORNEYS?

III. HAS THE ACTIONS OF THE TENTH CIRCUIT:

1 VIOLATED THE PETITIONERS RIGHT OF AN IMPARTIAL TRIBUNAL;

2. RIGHT OF DUE PROCESS;

STATEMENTS OF INTERESTED PARTIES

There are no other known parties than those appearing on the cover of this Writ of Mandamus

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TABLE OF CITATIONS

Cases Cited:

Goldberg v Kelly, 397 U.S. 254,267-68 (1970)

Homeland Stores, Inc v. Resolution Trust Corp., 17 F.3d 1269, 1273 (10th Cir 1994).

Marshall v Jerrico, 446 U.S. 238, 242 (1980);

Mullane v Central Hanover.Trust Co. 339 U.S. 306 314(1950)

Murchinson, 349 U.S. 133 (1955).

National Resources Defense Council, Inc v United States, 822 F.2d 104 (D.C. Cir 1987

Schweiker v McClure, 456 U.S. 188,195 (1992).

Texas Western Financial Corp v Edwards, 797 F 2d 902,905 (10th Cir.1986)

Turmey v Ohio, 273 U.S. 510(1927);

United States v Corral, 823 F.2d 1389(10th Cir. 1987), cert denied, 486 U.S. 1054(1988).

United States v Johnson, 941 f.2d 1102, 1112 (10th Cir 1991);

United States v Monsanto, 49 U.S. 600, 607(1989).

United States v. Short, 947 F.2d 1445.1460(10th Cir. 1991), cert. denied, 112 S.Ct. 1680 (1992);

Statutes cited:

273. Act to Enforce the Fourteenth Amendment-April 20, 1871 (U.S. Statutes at Large, Vol XVII, p 13ff)

Federal Rules of Procedures

FRAP 27,10th Cir R. 27 Motions

Other Authorities Cited:

Fifth Amendment, U.S. Constitution

Fourteenth Amendment, U.S. Constitution

2A Sutherland, Statutes and Statutory Construction, §§46.05, .06(C. Sands rev. 4th ed. 1984).

Appendix

Appendix A - Notice of Substitution of Counsel

Appendix B - Objection to Granting Appellees Notice of Substitution of Counsel.

STATEMENT OF JURISDICTION

Congress, by a law passed at the very first session after the adoption of the constitution vol. 1, p.58, s.13,

having expressly given the Supreme Court the power of issuing writs of mandamus. The words are:

> "the Supreme Court shall also have appellate jurisdiction from the circuit courts, and courts of the several states, in the cases hereinafter specially provided for, and shall have power to issue writs of prohibition to the district courts when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States."

Again in Title 28 U.S.C. §1651. Writs. (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Under Title 28 U.S.C. § 1361. Action to compel an officer of the United States to perform his duty:

"The district courts shall have original jurisdiction of any action in the nature of mandamus to compel and officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

On June 13, 2005 the Counsel for George W Bush and Alberto Gonzales filed a Motion entitled Notice of

Substitution of Counsel. See Appendix A. The same day it was granted by the Clerk of the Tenth Circuit.

On June 21, 2005, Pro Se Plaintiff-Appellant filed a motion entitled Objection to Granting Appellees Notice of Substitution of Counsel. See Appendix B

To date no response. Roger Liverman Jr appearing Pro Se files this Petition of Writ of Mandamus to the United States Supreme Court.

ISSUES TO BE DETERMINED

I. WHAT IS THE LEGAL DEFINITION OF THE WORD "SHALL"?

II. DOES THE FEDERAL RULES OF CIVIL PROCEDURE, RULES OF APPELLATE PROCEDURE APPLY TO INDIVIDUALS APPEARING PRO SE OR ONLY TO ATTORNEYS?

III. HAS THE ACTIONS OF THE TENTH CIRCUIT:

1 VIOLATED THE PETITIONERS RIGHT OF AN IMPARTIAL TRIBUNAL;

2. RIGHT OF DUE PROCESS;

At the outset of this brief, we need to distinguish between two important activities that are frequently mistaken for each other, persuasion and argument. "Persuasion" is primarily concerned with influencing the way people think or act whereas "argument" is concerned with discovering and conveying our best judgments about the truth of things through an appeal to reason.

The purpose of argument is simply ---to determine the "truth" of something

ARGUMENT

WHAT IS THE LEGAL DEFINITION OF THE WORD "SHALL"?

The Tenth Circuit defines "shall" in the following decisions:

"Shall" is not a permissive word; it is mandatory. United States v. Short, 947 F.2d 1445.1460(10th Cir. 1991), cert. denied, 112 S.Ct. 1680 (1992); United States v Johnson, 941 f.2d 1102, 1112 (10th Cir 1991); United States v Corral, 823 F.2d 1389(10th Cir. 1987), cert denied, 486 U.S. 1054(1988). When the word "shall" appears in a statute, "Congress could not have chosen stronger words to express its intent that [the specified action] be mandatory." United States v Monsanto, 49 U.S. 600, 607(1989).

There seems to be some inconsistency with the application and use of the word "shall" in both the district court and the Court of Appeals Tenth Circuit. When used by an Attorney the Court favors the definitions cited above, but when used by a person appearing Pro Se -- it means maybe, conditionally or just plainly ignored or depending on what party is involved by the Court as to the definition of the word "shall" if any.

DOES THE FEDERAL RULES OF CIVIL PROCEDURE, RULES OF APPELLATE PROCEDURE APPLY TO INDIVIDUALS APPEARING PRO SE OR ONLY TO ATTORNEYS?

There seems to be some inconsistency with the application and use of the Federal Rules of Civil Procedure, Rules of Appellate Procedure in both the district court and the Court of Appeals Tenth Circuit.

When used by an Attorney the Court favors the Rules cited above, but when used by a person appearing Pro Se – the Rules do not seem to apply. Pro Se Petitioner has repeatedly been denied i.e. initial disclosures, discovery, and motions being granted prior to receiving the motion in question. Attorneys certifying documents knowing they are false, the Courts ignoring well established rules because one party is appearing Pro Se.

Federal Rules of Civil Procedure, Rules of Appellate Procedure must be construed by the following to have any appearance of fairness.

Secondly the Tenth Circuit have consistently held that "[S]trict statutory construction is inherent in a standard of strict compliance," Texas Western Financial Corp v Edwards, 797 F 2d 902,905 (10th Cir. 1986)

Principles of statutory construction require that a statute be construed so that all its provisions have effect, and so that no part of the statute is superfluous. Homeland Stores, Inc v. Resolution Trust Corp., 17 F.3d 1269, 1273 (10th Cir 1994).

"To read out of a statutory provision a clause setting forth a specific condition or trigger to the provisions applicability is ...an entirely unacceptable method of construing statutes." National Resources Defense Council, Inc v United States, 822 F.2d 104 (D.C. Cir 1987); 2A Sutherland, Statutes and Statutory Construction, §§46.05, .06(C. Sands rev. 4th ed. 1984).

Thus to require less than strict compliance with FRAP 27,10th Cir R. 27 Motions shows direct and intentional bias towards persons appearing Pro Se.

HAS THE ACTIONS OF THE TENTH CIRCUIT:

1 VIOLATED THE PETITIONERS RIGHT OF AN IMPARTIAL TRIBUNAL:

Impartial Tribunal. Just as in criminal and quasi criminal cases, Turmey v Ohio, 273 U.S. 510(1927); In re Murchinson, 349 U.S. 133 (1955). "an impartial decision maker" is an "essential" right in civil proceedings as well. Goldberg v Kelly, 397 U.S. 254, 271 (1970) "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the

law... At the same time it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." Marshall v Jerrico, 446 U.S. 238, 242 (1980);Schweiker v McClure, 456 U.S. 188,195 (1992).

2. RIGHT OF DUE PROCESS:

The Courts have consistently upheld the Right of Due Process is inviolable and a protected Constitutional Right specifically the 5th and 14th Amendment of the United States Constitution guarantees such protection.

Notice. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprize interested parties of the pendency of they action and afford them an opportunity to present their objections." Mullane v Central Hanover Trust Co. 339 U.S. 306 314(1950)

The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent

the deprivation of his interest. Goldberg v Kelly, 397 U.S. 254,267-68 (1970)

The actions by the Court to grant a motion for "Notice of Substitution of Counsel" the same day it was received and prior to Plaintiff-Appellant receives the said Motion.

Not only shows the violation of Due Process was intentional, but proves that no Impartial Tribunal existed or there is Bias shown toward the Plaintiff- Appellant.

CONCLUSION

There is no doubt that through their actions both the District Court, Court of Appeals for the Tenth Circuit, the Defendant-Appellee by and through counsel **had intent** to deny Pro Se Plaintiff-Appellant of his due and equal protection of the laws.

They have done nothing but hinder, impede, obstructed and defeated the due course of justice by their actions through out this entire process.

Their actions have been criminal and the Pro Se Appellant demands Justice and criminal charges to be made for this travesty.

Petitioner asks this Court to protect his 14th Amendment Rights under the Constitution by enforcing the provisions of: 273. Act to Enforce the Fourteenth Amendment- April 20, 1871 (U.S. Statutes at Large, Vol XVII, p 13ff)

Respectfully Submitted,

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APPENDIX

APPENDIX A – NOTICE OF SUBSTITUTION OF COUNSEL FILED BY DEFENDANT-APPELEES ON JUNE 13 2005 AND GRANTED BY PATRICK FISHER, CLERK ON JUNE 13 2005

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT MOTION DECIDED ON JUNE 13, 2005. Appeal No. 05-4023

Roger Liverman, Jr. Plaintiff-Appellant

Vs

George W Bush and Alberto Gonzales, Defendant-Appelees

Pursuant to Rule 27.3(A)(8) of the Tenth Circuit Rules, President George W Bush and Attorney General Alberto Gonzales, by and through their undersigned counsel, hereby give notice that Carlie Christensen. Assistant United States Attorney is now counsel for the President and the Attorney General and should be substituted for Jan N Allred. Please serve all further notices, pleadings, papers and other materials in this case upon:

Please Note: This is the only item received by Plaintiff-Appellant from both the Tenth Circuit Court of Appeals and Plaintiff-Appellant did not receive a copy of the original Motion from the Defendant-Appelees.

APPENDIX B – OBJECTION TO GRANTING APPELLEES NOTICE OF SUBSTITUTION OF COUNSEL FILED BY PLAINTIFF-APPELLANT JUNE 21, 2005.

NOTE: NO ACTION OR RESPONSE BY TENTH CIRCUIT OR DEFENDANT-APPELLEE

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT MOTION DECIDED ON JUNE 13, 2005. Appeal No. 05-4023

Roger Liverman, Jr. Plaintiff-Appellant

Vs

George W Bush and Alberto Gonzales, Defendant-Appelees

OBJECTION TO GRANTING APPELLEES NOTICE OF SUBSTION OF COUNSEL

Pursuant to the Rules of Civil Procedure for the Tenth Circuit and of common sense and fair play. It would be nice to have the opportunity to object to a Filing by the Defendant at least once before it ruled on before Plaintiff-Appellant has even received a copy of the filing in Question.

I would like to direct the Impartial Tribunal that the date of this filing was granted on June 13, 2005. The Plaintiff-Appellant did not receive said filing until June 17, 2005. According to the attached filing it was filed and granted the same day. That was a pretty quick granting. It makes one feel that I am not a party to my own lawsuit or Appeal in this

esteem body and ironically enough it is a major issue that is being contested in this Appeal.

I also like to point out that there is a conflict of interest in this matter since I believe this is the first attempt in a series of upcoming legal and political maneuvering to combine these two SEPARATE but intrinsically intertwined significance both play on each other.

One is a Writ of Mandamus to Compel the President to enforce the Rule of Law and ultimately act on a Criminal Complaint made to the United States Attorney General this Appeal No. 05-4023. This criminal complaint is all encompassing in both its scope and reach of individuals and their "wrong doings" in other words the Assistant United States Attorney that is being asked to take this case is embarrassingly enough listed in that criminal complaint in her role of hindering and obstructing justice and as well as other colorful acts that are detailed in the Formal Complaint made to the Attorney General.

The Case that Carlie Christensen, Assistant United States Attorney is currently represents the Office of Inspector, U.S. Department of Treasury in a Freedom of Information Act Case that seeks a certified Document that is already well known and also been found in both the files of United States Judge Alba's Office but also in Assistant United States Attorney Stephen Sorensen's files (by happen stance- Miss Christiansen superior). I mention this because the FOIA case was seeking a copy of the one that was sent to the House Judiciary Committee by the Office of Inspector, U.S. Department of Treasury which stated under oath and presented by Carlie Christensen under oath that said document never existed. Which perpetrated a fraud upon the Court.

Which brings me back to this Ethical question can she Represent the President and the Attorney General with no conflict when she is potentially the one would be affected by the outcome of the Mandamus.

And Again: HOW CAN I BE ASURED OF AN IMPARTIAL TRIBUNAL WHEN THE COURTS CONTINUALLY GRANT MOTIONS BEFORE PLAINTIFF RECEIVES THE MOTION IN QUESTION??

These are not light issues and goes directly to the integrity and disposition of this Court. Plaintiff-Appellant DEMANDS an IMMEDIATE HEARING to PUT THIS ISSUE TO REST OF WHETHER OR NOT I AM GOING TO RECEIVE A FAIR AND IMPARTIAL TRIBUNAL OF MY APPEAL. OR AT THE VERY LEAST: THE CURRENT JUDGES WHO GRANTED THIS MOTION BE RECUSED AND ANOTHER PANEL OR JUDGES BE ASSIGNED.

IF NO ANSWER IS RECEIVED IN A TIMELY MANNER ON THIS SUBJECT. I WILL SEEK A WRIT OF MANDAMUS FROM THE UNITED STATES SUPREME COURT TO DEAL WITH THIS MATTER. I ONLY HOPE THAT THE RESPONSE IS GRANTED THE SAME DAY IT IS FILED.

Respectfully Submitted,
"s//Roger Liverman, Jr"
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